No 358

IN THE

Supreme Court of the United States

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CHARLES ELMORE CROPLEY
CLERK

October Term, 1943.

COSGROVE-MEEHAN COAL CORPORATION, COSGROVE & COMPANY, INC., COSGROVE-MEEHAN COAL COMPANY OF PENNSYLVANIA, and LENOX COAL COMPANY,

Petitioners,

v.

MAURICE P. ANGLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Cosgrove-Meehan Coal Corporation, Cosgrove & Company, Inc., Cosgrove-Meehan Coal Company of Pennsylvania, and Lenox Coal Company, respectfully pray for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit to review the judgment of that Court entered May 24, 1943, reversing a judgment of the United States District Court for the District of Delaware.

Statement.

Maurice P. Angland, respondent herein, in July of 1935 became a member of a committee of bondholders of Cosgrove-Meehan Coal Corporation, petitioner herein,

formed for the purpose of bringing about a reorganization of that corporation and its subsidiary companies, Cosgrove & Company, Inc., Cosgrove-Meehan Coal Company of Pennsylvania and Lenox Coal Company (No. 138, p. 48).[1] At the time of the formation of said committee, Cosgrove-Meehan Coal Company of Illinois, another subsidiary, was in bankruptcy in proceedings in the United States District Court for the Southern District of Illinois (No. 107, Plan of Reorganization, p. 3).

In anticipation of the reorganization of the parent and its subsidiaries, the bondholders' committee determined to salvage the properties of the Illinois subsidiary (No. 138, p. 55), and respondent as a member of the committee entered into an agreement with the trustee in bankruptcy for the Illinois subsidiary under the terms of which $2500 in cash, which was advanced by Cosgrove & Company, Inc., was paid to the trustee in exchange for a conveyance of the properties of the bankrupt to respondent, who in turn was to assign them to a new corporation to be formed for the purpose of holding title thereto, subject to the payment of certain preferred obligations against the bankrupt (No. 138, p. 52 et seq.). Respondent proceeded to liquidate a portion of the properties and to apply the proceeds to the payment of the preferred obligations of the bankrupt (No. 138, p.

[1] The Circuit Court of Appeals heard the appeal from the District Court upon the original papers in accordance with the provisions of Section 250 of Chapter X of the Bankruptcy Act, as amended (11 U. S. C. A. § 650, page 461), and the original papers were certified by the Circuit Court of Appeals to this Court in lieu of a certified transcript of the record as required by Rule 38, Paragraph 1. In this petition all references are to the docket numbers assigned by the Clerk of the District Court to the various papers filed in the proceeding, which numbers appear on said papers.

58), and subsequently, about the middle of the year 1937, conveyed the properties to Panama Mining Company which became a subsidiary of Cosgrove & Company, Inc. (No. 107, Plan of Reorganization, p. 5).

Petitions for reorganization of petitioners under Section 77B of the Bankruptcy Act, as amended, were filed in the United States District Court for the District of Delaware on June 22, 1937 (Nos. 1, 2, 3 and 4). Thereafter, by order dated September 7, 1937, the Court consolidated the petitions into a single cause, continued the respective debtors in possession of their properties and businesses, fixed November 1, 1937, "as a reasonable time in which the claims and interests of creditors and stockholders of the respective debtors [should] be filed or evidenced," and ordered that "no such claim or interest [might] participate in any plan of reorganization of the respective debtors except on order for cause shown unless filed or evidenced on or prior to said date in the manner herein provided" (No. 41). Proof of publication and mailing of notice as required by the order was filed in the proceedings on October 9, 1937 (No. 48).

A plan of reorganization of petitioners was approved by the District Court on April 17, 1942 (No. 108); and the plan, having been duly noticed for hearing in accordance with said order and accepted by the requisite amount and number of security holders, was confirmed and petitioners were directed to consummate the plan by order dated June 6, 1942 (No. 117). Paragraph (3) of the order provided:

> "The Plan of Reorganization of said Debtors shall be effective as of January 1, 1942, and it and its provisions and the provisions of this order of confirmation shall be binding upon the Debtors and each of them, *and upon all creditors and stockholders thereof,*

whether or not such creditors and stockholders are affected by said Plan of Reorganization, as amended, or have accepted it, or have filed proofs of their claims or interests herein, and whether or not their claims or interests have been scheduled or allowed, or allowable." (Emphasis supplied.)[2]

Paragraph (7) of the order provided:

"Jurisdiction is hereby reserved to this Court:

"(a) To supervise and control the manner in which the Plan of Reorganization, as amended, shall be put into effect and carried out, and all instruments, indentures, or securities necessary and appropriate to carry out the said Plan of Reorganization, as amended.

"(b) Over the claim filed herein by L. F. Wagner, et al, against the Debtors, but not to date allowed.

"(c) To allow reasonable compensation for the services rendered and reimbursement for actual and necessary costs and expenses incurred by parties in interest, depositaries, the trustees under the present First Mortgage Indenture of Cosgrove-Meehan Coal Corporation, committees, other representatives of creditors or stockholders, or other persons, and the officers, attorneys or agents for any of the foregoing, and of or for the Debtors, or any of them, in or in connection with this proceeding, or in connection with the Plan of Reorganization, as amended, and incident to this proceeding.

"(d) Generally, to determine any and all matters pertinent to this proceeding or to said Plan of Reor-

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[2] The provisions of this paragraph of the order are copied substantially *in haec verba* from Par. (1) of Sec. 224 of Chapter X of the Bankruptcy Act, as amended (11 U. S. C. A. § 624). Chapter X was made applicable to the proceeding generally by order of the District Court dated September 15, 1942 (No. 150).

ganization, as amended, *and not determined heretofore or by this order.*" (Emphasis supplied.)

Paragraph (8) of the order provided that all applications for compensation for services rendered and reimbursement for actual and necessary costs and expenses incurred by parties in interest should be filed on or before June 17, 1942, and fixed June 27, 1942, as the time for hearing said applications.

No application for the alteration or amendment of the plan under the provisions of Section 222 (11 U. S. C. A. § 622) of the Bankruptcy Act, as amended, was made within the time for appeal from said order; no appeal was taken from said order; and no application has ever been made in the District Court for a reopening of said proceedings.

In response to said order, respondent filed two claims for compensation, the one for general services performed as a member and secretary of the bondholders' committee (No. 131) and the other for individual services rendered in connection with the salvage of the Illinois properties (No. 130). The District Court, after due hearing, disallowed both of the claims on the ground that respondent, having dealt in the securities of Cosgrove-Meehan Coal Corporation, was disqualified from receiving compensation under the provisions of Section 249 of Chapter X of the Bankruptcy Act, as amended (11 U. S. C. A. § 649). (No. 151).[3] Respondent then filed his petition for leave to appeal to the United States Circuit Court of Appeals for the Third Circuit, which was granted by said Court. The Court by its judgment dated May 24, 1943,[3] found that the District Court did not err in disqualifying respondent from compensation for services rendered in connection with the reor-

[3] Copy included in Appendix hereto.

ganization proceeding, but opined that respondent's claim for salvage work was a creditor's claim, and concluded:

> "To the extent that the order of the District Court denied the applicant's claim for compensation for his services in salvaging the defendants' property prior to bankruptcy on the ground that the claim was barred by Section 249 as one arising out of a reorganization proceeding, the order is reversed and the cause is remanded for the purpose of permitting the claimant to apply to the District Court for a reopening of the proceeding in order that that claim may be considered and passed upon as a claim against the debtors' estate in bankruptcy."

Thereupon petitioners filed a petition for rehearing and by order dated June 17, 1943, the Court denied the petition, but amended its judgment, inter alia, as follows:

> "Between the words 'proceeding' and 'in' in the third line from the end of the opinion insert the following: ', if in the opinion of the District Court such action is warranted,' ".

Petitioners then requested leave to file a second petition for rehearing, which was denied by order of the Court dated June 29, 1943.

Basis for Jurisdiction.

It is contended that this Court has jurisdiction to review the judgment of the Circuit Court of Appeals for the Third Circuit under the provisions of Section 24 (c) of the Bankruptcy Act, as amended (11 U. S. C. A. § 47 (c)), and Section 240 (a) of the Judicial Code (28 U. S. C. A. § 346 (a)).

The Question Presented.

The Circuit Court of Appeals erred in holding that the District Court had jurisdiction to reopen the reorganization proceedings for the purpose of determining a creditor's claim after the confirmation of a plan of reorganization which had become final and was binding upon all creditors.

Reasons for Allowance of Writ.

1. The decision of the question here involved is of importance not only from the standpoint of the petitioners in the present case, but from the standpoint of reorganization administration in general. If creditors are to be permitted to come in after a plan of reorganization has become final and at any time prior to final decree in the District Court, the rights of the parties affected by the plan of reorganization could be changed from time to time even though the final decree might be delayed indefinitely pending the decision of any incidental matters over which the Court has retained jurisdiction. If respondent's claim may be reconsidered, then other creditors who failed to file their claims prior to the falling of the bar order and the confirmation of the plan may likewise apply to the Court for a reopening of the proceedings and thereby impose additional burdens and expense upon the reorganized company, the petitioners, and other parties in interest.

2. The interests of justice and expedience demand that the rights of petitioners should be finally adjudicated by the Circuit Court of Appeals. Under the judgment of the Circuit Court of Appeals as it now stands, an application to reopen will be made to the District Court; and regardless of its ruling, a further appeal will be necessary to the Circuit Court of Appeals, thereby delaying the entry of

the final decree and hampering the welfare and progress of the reorganized company.

3. The judgment of the Circuit Court of Appeals is in direct conflict with the provisions of the Bankruptcy Act, as amended.

Wherefore, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and of all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court, that the judgment of the Circuit Court of Appeals be reversed, and that petitioners be granted such other and further relief as may seem proper.

COSGROVE-MEEHAN COAL CORPORATION,
COSGROVE & COMPANY, INC.,
COSGROVE-MEEHAN COAL COMPANY OF PENNSYLVANIA, AND
LENOX COAL COMPANY,

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